

What are special treatments?

Special treatments are specific treatments which historically have had particularly negative human rights implications for people with disability, especially people with disabilities in institutions. These include psychosurgery, use of aversive stimuli, removal of all teeth, termination of pregnancies and **sterilisations**. Parliament considers these treatments so sensitive that there must be a hearing by the Board before a person with a decision making disability should proceed with such a treatment.

Who can consent to a special treatment?

Most people can make their own decision about a special treatment and can give consent.

If a person with disability cannot understand what the treatment is and what effect it will have, an application to the Board can be made to provide consent on that person's behalf.

Only the Board has the power to give consent to a special treatment for a person with a disability who is incapable of giving consent.

What is a sterilisation?

Any treatment that is intended, or is reasonably likely, to have the effect of rendering permanently infertile the person on whom it is carried out.

For whom can the Board authorise a sterilisation?

Any person with a disability who is incapable of giving consent to the carrying out of medical or dental treatment. This includes children with disabilities. A person is incapable of giving consent to the carrying out of medical or dental treatment if the person –

- (a) is incapable of understanding the general nature and effect of the proposed treatment; or
- (b) is incapable of indicating whether or not he or she consents or does not consent to the carrying out of the treatment.

What factors used to determine whether a sterilisation may be authorised by the Board?

The Board must be satisfied that

- (a) the medical or dental treatment is otherwise lawful; and
- (b) that person is incapable of giving consent; and
- (c) the medical or dental treatment would be in the best interests of that person.

When it considers whether a special treatment is in the best interests of the person, the Board takes into account:

- (a) the wishes of that person, so far as they can be ascertained; and
- (b) the consequences to that person if the proposed treatment is not carried out; and
- (c) any alternative treatment available to that person; and
- (d) whether the proposed treatment can be postponed on the ground that better treatment may become available and whether that person is likely to become capable of consenting to the treatment.

Who can make an application?

An application for consent to a special treatment for a person with disability can be made by any person who, in the opinion of the Board, has a special interest in the person with disability

Can a person be legally represented at a hearing of the Board?

The applicant, the Public Guardian and the person to whom the application relates have a right to be legally represented at a hearing. On some occasions, the Board appoints an Australian legal practitioner or medical practitioner or any other person with appropriate expertise to assist the Board in any proceedings before it. On some occasions, the Board may arrange for the person to whom the application relates to have representation from the Legal Aid Commission of Tasmania.

How will the Board make a decision on the application?

In making a decision, the Board will consider:

- the Australian Guardianship and Administration Council's *Protocol for Special Medical Procedures (Sterilisation) (2009)*, which can be downloaded at www.agac.org.au.
- the terms of the United Nations Convention on the Rights of Persons with Disabilities
- the principles contained in the *Guardianship and Administration Act 1995*.

In general these legislative principles are that:

- (a) the means which is the least restrictive of a person's freedom of decision and action as is possible in the circumstances is adopted; and
- (b) the best interests of a person with disability are promoted; and
- (c) the wishes of a person with a disability are wherever possible given effect to.

What should be included with the application?

- a Health Care Professional Report (HCPR) from the person's treating doctor (available on the Board's website)
- additional reports as required to be attached to the HCPR (for specific sections)
- if required, a separate medical report from a specialist in the relevant area of medicine who is not involved in the person's care, and who has no interest in the outcome of the hearing.

What does the HCPR contain?

The HCPR requires information about:

- (a) the person's capacity to consent to the proposed treatment
- (b) the person's disability and effect upon decision making
- (c) the reproductive health of the person (including, for females, any difficulties in relation to menstruation),
- (d) the medical needs of the person
- (e) the nature and purpose of the proposed treatment,

- (f) whether the proposed treatment is necessary for the welfare of the person,
- (g) the wishes of the person
- (h) the wishes of other relevant parties, and
- (i) any other tests set down in the legislation of the particular state or territory, such as:
 - (a) why alternative and less invasive treatments would be, or have proven to be, inadequate; and
 - (b) the likely long term social and psychological effects of the treatment on the person; and
 - (c) whether scientific or medical advances are reasonably anticipated within the foreseeable future that will make possible either improvement in the person's condition or alternative and less drastic than a medical intervention such as sterilisation.

What information does the Board require?

The Board will require information about the person, the person's parents and carers, their social environment, and the person's medical background. The HCPR will provide this information, in addition to a completed application form submitted to the Board by the applicant, which is available on the Board's website.

An application that does not provide sufficient material may be rejected by the Board without a hearing, or the Board may require the applicant to submit further materials before the application will be listed for a hearing.

Making an application for consent to a special treatment

An applicant must complete and lodge the application for consent to a special treatment (sterilisation) form, which is available on the Board's website.

To lodge the application form, mail, fax or deliver the form to the address overleaf.

After making the application

Once the Board has received all the necessary documents, it will conduct a hearing to decide if consent should be granted.

More information:

There is more information about the Boards' hearing process on the website, including some video resources.

Other fact sheets available in this series:

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